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ALEX TAURKE

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 GABRIELLE GANGITANO, an
individual,

12 Plaintiff,

13 vs.

14 CABRILLO COLLEGE, a local
educational agency; and ALEX B.
15 TAURKE, an individual,

16 Defendants.
17

No. 5:17-cv-02870-SVK

**ANSWER OF DEFENDANT ALEX TAURKE
TO PLAINTIFF'S COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

[DEMAND FOR JURY TRIAL]

18 Defendant ALEX TAURKE answers the Complaint for Damages and Injunctive
19 Relief of Plaintiff Gabrielle Gangitano on file herein ("Complaint"), as follows:

20 **INTRODUCTION**

21 1. Answering the allegations of Paragraph 1 of the Complaint, Defendant
22 alleges that no response is required.

23 2. Answering the allegations in Paragraph 2 of the Complaint, Defendant admits
24 that during the 2016 Spring Academic Semester Plaintiff was a student and Defendant was
25 an instructor at Cabrillo. Except as specifically admitted herein, Defendant denies the
26 remaining allegations contained in Paragraph 2.

27 3. Answering the allegations contained in Paragraph 3 of the Complaint,
28 Defendant alleges that he has no information or belief upon the subjects contained therein

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1 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
2 on that ground, denies each and every, all and singular, generally and specifically, said
3 allegations and the whole thereof.

4 4. Answering the allegations contained in Paragraph 4 of the Complaint,
5 Defendant denies the allegations of continuous conduct that was unwanted, inappropriate
6 and injurious and the allegations that Defendant was unfit and/or was a substantial risk of
7 abuse to students. As for the remaining allegations contained in Paragraph 4, Defendant
8 alleges that he has no information or belief upon the subjects contained therein sufficient to
9 enable him to answer the allegations in this paragraph and, placing his denial on that
10 ground, denies each and every, all and singular, generally and specifically, said allegations
11 and the whole thereof.

12 5. Answering the allegations contained in Paragraph 5 of the Complaint,
13 Defendant alleges that he has no information or belief upon the subjects contained therein
14 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
15 on that ground, denies each and every, all and singular, generally and specifically, said
16 allegations and the whole thereof.

17 6. Answering the allegations contained in Paragraph 6 of the Complaint,
18 Defendant alleges that he has no information or belief upon the subjects contained therein
19 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
20 on that ground, denies each and every, all and singular, generally and specifically, said
21 allegations and the whole thereof.

22 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

23 7. Answering the allegations in Paragraph 7 of the Complaint, Defendant admits
24 that Plaintiff's Complaint contains such causes of action.

25 8. Answering the allegations contained in Paragraph 8 of the Complaint,
26 Defendant alleges that he has no information or belief upon the subjects contained therein
27 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
28 on that ground, denies each and every, all and singular, generally and specifically, said

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1 allegations and the whole thereof.

2 9. Answering the allegations contained in Paragraph 9 of the Complaint,
3 Defendant denies the allegations of wrongful conduct. As for the remaining allegations
4 contained in Paragraph 9, Defendant alleges that he has no information or belief upon the
5 subjects contained therein sufficient to enable him to answer the allegations in this
6 paragraph and, placing his denial on that ground, denies each and every, all and singular,
7 generally and specifically, said allegations and the whole thereof.

8 10. Answering the allegations contained in Paragraph 10 of the Complaint,
9 Defendant alleges that he has no information or belief upon the subjects contained therein
10 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
11 on that ground, denies each and every, all and singular, generally and specifically, said
12 allegations and the whole thereof.

13 **PARTIES**

14 11. Answering the allegations contained in Paragraph 10 of the Complaint,
15 Defendant admits that Plaintiff was a student at Cabrillo. As for the remaining allegations
16 contained in Paragraph 11, Defendant alleges that he has no information or belief upon the
17 subjects contained therein sufficient to enable him to answer the allegations in this
18 paragraph and, placing his denial on that ground, denies each and every, all and singular,
19 generally and specifically, said allegations and the whole thereof.

20 12. Answering the allegations contained in Paragraph 13 of the Complaint,
21 Defendant admits.

22 13. Answering the allegations contained in Paragraph 13 of the Complaint,
23 Defendant admits.

24 14. Answering the allegations contained in Paragraph 14 of the Complaint,
25 Defendant admits that his conduct was within the course and scope of employment. As for
26 the remaining allegations contained in Paragraph 14, Defendant alleges that he has no
27 information or belief upon the subjects contained therein sufficient to enable him to answer
28 the allegations in this paragraph and, placing his denial on that ground, denies each and

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1 every, all and singular, generally and specifically, said allegations and the whole thereof.

2 **STATEMENT OF FACTS**

3 15. Answering the allegations contained in Paragraph 15 of the Complaint,
4 Defendant denies the allegation of unlawful conduct. Defendant denies the allegation that
5 Plaintiff was a tutor acting under the guidance of Defendant. Defendant admits the
6 remaining allegations to the extent Defendant asked Plaintiff to become a supplemental
7 instruction leader, but denies that this was done instead of having Plaintiff work as a tutor.

8 16. Answering the allegations contained in Paragraph 16 of the Complaint,
9 Defendant denies that throughout the course of the semester he was involved in incidents
10 of a sexual nature that were sometimes accompanied by inappropriate physical touching.
11 As for the remaining allegations contained in Paragraph 16, Defendant alleges that he has
12 no information or belief upon the subjects contained therein sufficient to enable him to
13 answer the allegations in this paragraph and, placing his denial on that ground, denies
14 each and every, all and singular, generally and specifically, said allegations and the whole
15 thereof.

16 17. Answering the allegations contained in Paragraph 17 of the Complaint,
17 Defendant admits that he possibly offered Plaintiff food, that he hugged Plaintiff and that
18 before meeting with Plaintiff he may have closed the blinds in this office earlier in the day.
19 Defendant admits that he recommended to Plaintiff that she complete her lower division
20 math classes before transferring to another school. Defendant admits that the frequency of
21 the number of times he and Plaintiff saw each other increased toward the end of the
22 semester. As for the remaining allegations contained in Paragraph 17, Defendant alleges
23 that he has no information or belief upon the subjects contained therein sufficient to enable
24 him to answer the allegations in this paragraph and, placing his denial on that ground,
25 denies each and every, all and singular, generally and specifically, said allegations and the
26 whole thereof.

27 18. Answering the allegations contained in Paragraph 18 of the Complaint,
28 Defendant admits.

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1 19. Answering the allegations contained in Paragraph 19 of the Complaint,
2 Defendant admits

3 20. Answering the allegations contained in Paragraph 20 of the Complaint,
4 Defendant alleges that he has no information or belief upon the subjects contained therein
5 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
6 on that ground, denies each and every, all and singular, generally and specifically, said
7 allegations and the whole thereof.

8 21. Answering the allegations contained in Paragraph 21 of the Complaint,
9 Defendant admits that during the meeting he moved his chair closer to Plaintiff. As for the
10 remaining allegations contained in Paragraph 21, Defendant alleges that he has no
11 information or belief upon the subjects contained therein sufficient to enable him to answer
12 the allegations in this paragraph and, placing his denial on that ground, denies each and
13 every, all and singular, generally and specifically, said allegations and the whole thereof.

14 22. Answering the allegations contained in Paragraph 22 of the Complaint,
15 Defendant alleges that he has no information or belief upon the subjects contained therein
16 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
17 on that ground, denies each and every, all and singular, generally and specifically, said
18 allegations and the whole thereof.

19 23. Answering the allegations contained in Paragraph 23 of the Complaint,
20 Defendant alleges that he has no information or belief upon the subjects contained therein
21 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
22 on that ground, denies each and every, all and singular, generally and specifically, said
23 allegations and the whole thereof.

24 24. Answering the allegations contained in Paragraph 24 of the Complaint,
25 Defendant alleges that he has no information or belief upon the subjects contained therein
26 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
27 on that ground, denies each and every, all and singular, generally and specifically, said
28 allegations and the whole thereof.

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1 25. Answering the allegations contained in Paragraph 25 of the Complaint,
2 Defendant alleges that he has no information or belief upon the subjects contained therein
3 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
4 on that ground, denies each and every, all and singular, generally and specifically, said
5 allegations and the whole thereof.

6 26. Answering the allegations contained in Paragraph 26 of the Complaint,
7 Defendant alleges that he has no information or belief upon the subjects contained therein
8 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
9 on that ground, denies each and every, all and singular, generally and specifically, said
10 allegations and the whole thereof.

11 27. Answering the allegations contained in Paragraph 27 of the Complaint,
12 Defendant admits that OCR commenced an investigation that involved interviewing
13 Defendant. As for the remaining allegations contained in Paragraph 27, Defendant alleges
14 that he has no information or belief upon the subjects contained therein sufficient to enable
15 him to answer the allegations in this paragraph and, placing his denial on that ground,
16 denies each and every, all and singular, generally and specifically, said allegations and the
17 whole thereof.

18 28. Answering the allegations contained in Paragraph 28 of the Complaint,
19 Defendant alleges that he has no information or belief upon the subjects contained therein
20 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
21 on that ground, denies each and every, all and singular, generally and specifically, said
22 allegations and the whole thereof.

23 29. Answering the allegations contained in Paragraph 29 of the Complaint,
24 Defendant alleges that he has no information or belief upon the subjects contained therein
25 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
26 on that ground, denies each and every, all and singular, generally and specifically, said
27 allegations and the whole thereof.

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1 30. Answering the allegations contained in Paragraph 30 of the Complaint,
2 Defendant alleges that he has no information or belief upon the subjects contained therein
3 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
4 on that ground, denies each and every, all and singular, generally and specifically, said
5 allegations and the whole thereof.

6 31. Answering the allegations contained in Paragraph 31 of the Complaint,
7 Defendant alleges that he has no information or belief upon the subjects contained therein
8 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
9 on that ground, denies each and every, all and singular, generally and specifically, said
10 allegations and the whole thereof.

11 32. Answering the allegations contained in Paragraph 32 of the Complaint,
12 Defendant admits that he has been allowed to remain on campus as an employee. As for
13 the remaining allegations contained in Paragraph 32, Defendant alleges that he has no
14 information or belief upon the subjects contained therein sufficient to enable him to answer
15 the allegations in this paragraph and, placing his denial on that ground, denies each and
16 every, all and singular, generally and specifically, said allegations and the whole thereof.

17 33. Answering the allegations contained in Paragraph 33 of the Complaint,
18 Defendant alleges that he has no information or belief upon the subjects contained therein
19 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
20 on that ground, denies each and every, all and singular, generally and specifically, said
21 allegations and the whole thereof.

22 34. Answering the allegations in Paragraph 34 of the Complaint, which
23 incorporates Paragraphs 1 through 33 of the Complaint, Defendant refers to its answers to
24 said Paragraphs and, by such reference, incorporates the same herein to have the same
25 force and effect as if set forth fully at length.

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FIRST CAUSE OF ACTION**Violation of Title IX, 20 U.S.C §1681****(Against Defendant Cabrillo College)**

35. Answering the allegations contained in Paragraph 35 of the Complaint, Defendant admits that Cabrillo operates an education program or activity receiving federal financial assistance. The balance of Paragraph 35 is a purported statement of law and does not contain any allegations against Defendant.

36. Answering the allegations contained in Paragraph 36 of the Complaint, Defendant denies all of the allegations in Paragraph 36.

37. Answering the allegations contained in Paragraph 37 of the Complaint, Defendant denies all of the allegations in Paragraph 37.

38. Answering the allegations contained in Paragraph 38 of the Complaint, Defendant denies all of the allegations in Paragraph 38.

39. Answering the allegations contained in Paragraph 39 of the Complaint, Defendant alleges that he has no information or belief upon the subjects contained therein sufficient to enable him to answer the allegations in this paragraph and, placing his denial on that ground, denies each and every, all and singular, generally and specifically, said allegations and the whole thereof.

40. Answering the allegations contained in Paragraph 40 of the Complaint, Defendant alleges that he has no information or belief upon the subjects contained therein sufficient to enable him to answer the allegations in this paragraph and, placing his denial on that ground, denies each and every, all and singular, generally and specifically, said allegations and the whole thereof.

41. Answering the allegations contained in Paragraph 41 of the Complaint, Defendant alleges that he has no information or belief upon the subjects contained therein sufficient to enable him to answer the allegations in this paragraph and, placing his denial on that ground, denies each and every, all and singular, generally and specifically, said allegations and the whole thereof.

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SECOND CAUSE OF ACTION**Deprivation of Federal Rights, 42 U.S.C. §1983****(Against Defendant Cabrillo College)**

42. Answering the allegations in Paragraph 42 of the Complaint, which incorporates Paragraphs 1 through 41 of the Complaint, Defendant refers to its answers to said Paragraphs and, by such reference, incorporates the same herein to have the same force and effect as if set forth fully at length.

43. Answering the allegations contained in Paragraph 43 of the Complaint, Defendant alleges that he has no information or belief upon the subjects contained therein sufficient to enable him to answer the allegations in this paragraph and, placing his denial on that ground, denies each and every, all and singular, generally and specifically, said allegations and the whole thereof.

44. Answering the allegations contained in Paragraph 44 of the Complaint, Defendant alleges that he has no information or belief upon the subjects contained therein sufficient to enable him to answer the allegations in this paragraph and, placing his denial on that ground, denies each and every, all and singular, generally and specifically, said allegations and the whole thereof.

45. Answering the allegations contained in Paragraph 45 of the Complaint, Defendant alleges that he has no information or belief upon the subjects contained therein sufficient to enable him to answer the allegations in this paragraph and, placing his denial on that ground, denies each and every, all and singular, generally and specifically, said allegations and the whole thereof.

46. Answering the allegations contained in Paragraph 46 of the Complaint, Defendant denies all of the allegations in Paragraph 46.

THIRD CAUSE OF ACTION**Sexual Assault****(Against Defendant Alex B. Taurke)**

47. Answering the allegations in Paragraph 47 of the Complaint, which

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1 incorporates Paragraphs 1 through 46 of the Complaint, Defendant refers to its answers to
2 said Paragraphs and, by such reference, incorporates the same herein to have the same
3 force and effect as if set forth fully at length.

4 48. Answering the allegations contained in Paragraph 48 of the Complaint,
5 Defendant denies all of the allegations in Paragraph 48.

6 49. Answering the allegations contained in Paragraph 49 of the Complaint,
7 Defendant alleges that he has no information or belief upon the subjects contained therein
8 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
9 on that ground, denies each and every, all and singular, generally and specifically, said
10 allegations and the whole thereof.

11 50. Answering the allegations contained in Paragraph 50 of the Complaint,
12 Defendant alleges that he has no information or belief upon the subjects contained therein
13 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
14 on that ground, denies each and every, all and singular, generally and specifically, said
15 allegations and the whole thereof.

16 51. Answering the allegations contained in Paragraph 51 of the Complaint,
17 Defendant denies all of the allegations in Paragraph 51.

18 52. Answering the allegations contained in Paragraph 52 of the Complaint,
19 Defendant denies all of the allegations in Paragraph 52.

20 **THIRD CAUSE OF ACTION**

21 **Sexual Battery**

22 **(Against Defendant Alex B. Taurke)**

23 53. Answering the allegations in Paragraph 53 of the Complaint, which
24 incorporates Paragraphs 1 through 52 of the Complaint, Defendant refers to its answers to
25 said Paragraphs and, by such reference, incorporates the same herein to have the same
26 force and effect as if set forth fully at length.

27 54. Answering the allegations contained in Paragraph 54 of the Complaint,
28 Defendant admits that he touched Plaintiff's knees and thigh while she was in his office.

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1 As for the remaining allegations contained in Paragraph 54, Defendant alleges that he has
2 no information or belief upon the subjects contained therein sufficient to enable him to
3 answer the allegations in this paragraph and, placing his denial on that ground, denies
4 each and every, all and singular, generally and specifically, said allegations and the whole
5 thereof.

6 55. Answering the allegations contained in Paragraph 55 of the Complaint,
7 Defendant denies each and every, all and singular, generally and specifically, said
8 allegations Paragraph 55 of the Complaint, and the whole thereof.

9 56. Answering the allegations contained in Paragraph 56 of the Complaint,
10 Defendant alleges that he has no information or belief upon the subjects contained therein
11 sufficient to enable him to answer the allegations in this paragraph and, placing his denial
12 on that ground, denies each and every, all and singular, generally and specifically, said
13 allegations and the whole thereof.

14 57. Answering the allegations contained in Paragraph 57 of the Complaint,
15 Defendant denies all of the allegations in Paragraph 57.

16 58. Answering the allegations contained in Paragraph 58 of the Complaint,
17 Defendant denies all of the allegations in Paragraph 58.

18 **AFFIRMATIVE DEFENSES**

19 **AS AND FOR A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
20 **SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT**
21 **ALLEGES:**

22 That neither the complaint nor any purported cause of action therein sets forth facts
23 sufficient to state a cause of action against Defendant.

24 **AS AND FOR A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
25 **TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT**
26 **ALLEGES:**

27 That Plaintiff's claims are barred because at all times relevant hereto the actions of
28 Defendant with respect to Plaintiff were taken in the legitimate exercise of managerial

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1 discretion, based on legitimate, non-discriminatory reasons, and done at all times in good
2 faith.

3 **AS AND FOR A THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
4 **SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT**
5 **ALLEGES:**

6 That Defendant is informed and believes, and on that basis alleges, that Plaintiff's
7 claims are barred by any and all applicable statutes of limitation.

8 **AS AND FOR A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
9 **TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT**
10 **ALLEGES:**

11 That Defendant is informed and believes, and on that basis alleges, that Plaintiff has
12 failed to mitigate her damages, if any, and thereby is precluded from recovering those
13 damages which could have reasonably been avoided by the exercise of due care on her
14 part.

15 **AS AND FOR A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
16 **SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT**
17 **ALLEGES:**

18 Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

19 **AS AND FOR A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
20 **SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT**
21 **ALLEGES:**

22 Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of waiver
23 and/or estoppel.

24 **AS AND FOR A SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
25 **TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT**
26 **ALLEGES:**

27 That Defendant is immune from liability for damages under the doctrine of qualified
28 immunity because their conduct did not violate clearly established statutory or

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1 constitutional rights of which a reasonable person would have known.

2 **AS AND FOR AN EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
3 **TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT**
4 **ALLEGES:**

5 That all acts or omissions by this answering Defendant of which Plaintiff complains
6 were performed (if at all) in good faith and he reasonably believed they were constitutional
7 and lawful, and without any malicious intent to deprive Plaintiff of any constitutional and/or
8 lawful rights.

9 **AS AND FOR A NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
10 **SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT**
11 **ALLEGES:**

12 That Plaintiff's action is, in whole or in part, barred by the claims presentation
13 requirements of the California Government Claims Act, including, but not limited to, the
14 provisions of California Government Code §§ 905, 945.4, and 911.2.

15 **AS AND FOR A TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
16 **TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT**
17 **ALLEGES:**

18 That Plaintiff was contributorily negligent or otherwise at fault and such conduct
19 contributed to her injuries, if any. Therefore, Plaintiff's recovery should either be barred or
20 reduced to the extent of Plaintiff's own negligence or fault.

21 **AS AND FOR AN ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE**
22 **DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,**
23 **DEFENDANT ALLEGES:**

24 Plaintiff's claims are barred because no causal relationship exists between any
25 injuries, loss or damages, if any, suffered by Plaintiff and the alleged negligent or wrongful
26 actions, if any, of Defendant.

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1 **AS AND FOR A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE**
2 **DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,**
3 **DEFENDANT ALLEGES:**

4 That other persons or entities, including both parties and non-parties, were
5 comparatively negligent or otherwise at fault and such conduct contributed to Plaintiff's
6 alleged injuries. Therefore, Plaintiff's recovery, if any, against this answering Defendant
7 should be reduced to the extent of the negligence or fault of these others.

8 **AS AND FOR A THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE**
9 **DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,**
10 **DEFENDANT ALLEGES:**

11 That any and all acts or omissions of this answering Defendant, which allegedly
12 caused the injuries or damages alleged in said complaint were the result of an exercise of
13 discretion vested in him. This answering Defendant is, therefore, not liable for the injuries
14 or damages complained of pursuant to Government Code sections 815.2(b) and 820.2.

15 **AS AND FOR A FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE**
16 **DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,**
17 **DEFENDANT ALLEGES:**

18 That any and all mandatory duties imposed upon Defendant, the failure of which
19 allegedly gave rise to the incident alleged in the complaint or allegedly caused the injuries
20 complained of, were exercised with reasonable diligence and, therefore, Defendant is not
21 liable for the alleged injuries pursuant to Government Code section 815.6.

22 **AS AND FOR A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE**
23 **DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,**
24 **DEFENDANT ALLEGES:**

25 That Defendant is immune from liability for any injuries or damages allegedly
26 caused by the act or omission of another person pursuant to California Government Code
27 section 820.8.

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1 **AS AND FOR A SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE**
2 **DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,**
3 **DEFENDANT ALLEGES:**

4 That Plaintiff's action is barred by the immunities and defenses as afforded by §§
5 840 through 960.8 of the California Government Code.

6 **AS AND FOR A SEVENTEENTH SEPARATE AND DISTINCT AFFIRMATIVE**
7 **DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,**
8 **DEFENDANT ALLEGES:**

9 That Plaintiff is barred and estopped from recovery herein by virtue of her own
10 conduct.

11 **AS AND FOR AN EIGHTEENTH SEPARATE AND DISTINCT AFFIRMATIVE**
12 **DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,**
13 **DEFENDANT ALLEGES:**

14 That Plaintiff's claims are barred by the equitable doctrine of laches.

15 **AS AND FOR A NINETEENTH SEPARATE AND DISTINCT AFFIRMATIVE**
16 **DEFENSE TO SAID COMPLAINT AND EACH CAUSE OF ACTION THEREOF,**
17 **DEFENDANT ALLEGES:**

18 That this answering Defendant was under no mandatory duty imposed by law which
19 was designed to protect against the risk of the particular injury, if any, suffered by Plaintiff
20 as a result of the alleged incident or incidents described in the complaint.

21 **AS AND FOR A TWENTIETH SEPARATE AND DISTINCT AFFIRMATIVE**
22 **DEFENSE TO SAID COMPLAINT AND EACH CAUSE OF ACTION THEREOF,**
23 **DEFENDANT ALLEGES:**

24 That Plaintiff's claims are barred because Plaintiff failed to exhaust her judicial
25 and/or administrative remedies.

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1 AS AND FOR A TWENTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE
2 DEFENSE TO SAID COMPLAINT AND EACH CAUSE OF ACTION THEREOF,
3 DEFENDANT ALLEGES:

4 That the answering Defendant reserves the right to assert such other affirmative and
5 special defenses as may become known through the course of discovery.

6 **DEMAND FOR JURY TRIAL**

7 Defendants hereby demand a jury trial on all claims in this case.

8 **PRAYER**

9 **WHEREFORE**, this answering Defendant prays the Plaintiff take nothing by
10 her Complaint and that this answering Defendant be dismissed hence with attorney's fees,
11 with his costs of suit incurred herein and for such other and further relief as the Court
12 deems fits and proper.

13
14 DATED: 7-6-17

15 **DAVIS & YOUNG, APLC**

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17 By


Mark E. Davis
Attorneys for Defendant
Alex B. Taurke